IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9387 of 1999

with

SPECIAL CIVIL APPLICATION No 6044 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIPRASAD BUDHAYI

Versus

SHETH JAMUNALAL BHAGUBHAI RELIGIOUS TRUST

Appearance:

1. Special Civil Application No. 9387 of 1999
MR KR KOSHTI for Petitioner
MR DIPAK R DAVE for Respondent

2. Special Civil ApplicationNo 6044 of 1999
MR DIPAK R DAVE for Petitioner
MR KR KOSHTI for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 16/06/2000

ORAL JUDGEMENT

Rule. Learned counsel Mr. Dipak R. Dave for respondent in SCA No.9387 of 1999, and learned counsel Mr. KR Koshti in SCA No. 6044 of 1999 waives service of rule.

2. The Labour Court, Ahmedabad in Reference (LCA) No. 1581 of 1991 dated 3-4-1999 directed the trust to reinstate Hariprasad Budhayi to his post along with 50 % backwages. The petitioner in SCA 9387 of 1999 Hariprasad Budhayi having felt aggrieved by the order of the Labour Court granting 50 % backwages filed SCA No. 9387 of 1999 and claimed full backwages. The trust having felt aggrieved by the order of the Labour Court for reinstatement as well as payment of 50 % of the backwages filed SCA No. 6044 of 1999. In course of arguments learned counsel Mr. Koshti for the petitioner Mr. Budhyai expressed that the petitioner wants to withdraw the petition, leaving the matter of backwages to this Court. Mr. Dave, learned counsel appearing on behalf of the petitioner trust in SCA No. 6044 of 1999 submitted that the trust has already reinstated Mr. Budhayi to his post and they are agreeable to pay a reasonable amount less than 50 % of the backwages as awarded by the Labour Court, and the matter be disposed of.

3. It appears from both the petitions that the trust did not adduce any evidence regarding gainful employment of Mr. Budhayi before the Labour Court, and they have raised this question before this Court by amending their petition. In the amended petition they have stated that Mr. Budhayi was engaged in another school after he left the job under the trust. It appears that the Labour Court has not decided this question which has been raised for the first time before this Court. If the retrenched employee is gainfully employed during the period of his retrenchment and reinstatement then such matter requires decision by Labour Court for ascertaining claim of backwages to be paid by the employer. It is not denied by learned counsel for the petitioner in SCA 9387 of 1999 that Mr. Budhayi was engaged in the period between the retrenchment and reinstatement. However learned counsel disputed the claim of amount received by Mr. Budhyai. Since the matter of gainful employment has not been agitated, I am of the view that, in absence of such a plea it is difficult to ascertain back wages of

retrenched employee. However considering the submission of learned counsel of both the parties, I am of the view that a fixed sum of Rs.10,000-00 as backwages will be sufficient compensation to Mr. Budhayi. Learned counsel for the petitioner of SCA No. 6044 of 1999 undertakes that Mr. Budhayi who has been reinstated by the trust will not be terminated without following due course of law. Having regard to the facts & circumstances of the case and after hearing learned counsel of both the parties, the award of Labour Court is modified to the extent that, instead of 50 % of the backwages, petitioner Budhayi who has been reinstated by the trust shall be entitled to a fixed backwages of Rs.10,000-00 (Rs. ten thousand only) and the trust - the petitioner in SCA No. 6044 of 1999 is directed to pay the said amount to Mr. Budhayi within a period of fifteen days from the date of receipt of this order. With the aforesaid observations and directions, these two petitions are disposed of. Rule made absolute to the aforesaid extent in both the petitions. I make no order as to costs.

Dt: 16-6-2000 (P.K. Sarkar, J)